

I895polC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

17 Cr. 649 (GBD)

5 TERRELL POLK,

6 Defendant.

7 -----x

8 August 9, 2018  
9 10:35 a.m.

10 Before:

11 HON. GEORGE B. DANIELS,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
17 Southern District of New York

BY: NICHOLAS FOLLY

18 Assistant United States Attorney

19 RICHARD B. LIND

20 Attorney for Defendant  
21  
22  
23  
24  
25

I895polC

(Case called)

THE DEPUTY CLERK: Good morning, counsel. Will the parties please rise and give their appearances for the record, beginning with the government?

MR. FOLLY: Good morning, your Honor. Nicholas Folly on behalf of the government.

THE COURT: Good morning, Mr. Folly.

MR. LIND: Good morning, Judge. Richard Lind on behalf of Terrell Polk.

THE COURT: Good morning, Mr. Lind.

Mr. Lind, I received a letter from you. Did you want to be heard? You can be seated.

MR. LIND: Just very, very briefly, Judge.

I have had a discussion with Mr. Polk that became very animated yesterday and he told me he wanted another attorney. As I indicated in the letter, I think a part of it, maybe more than half of it, would be related to the fact that the other three defendants in the case have received plea offers which two of them have already pled guilty, that is my understanding, and the third one will be pleading next week and he has not been given any plea offer.

THE COURT: Okay.

MR. LIND: And I think there are other factors which, if we have to go into, Judge, I would request that the government be excused so we can, so that I can talk more freely

I895polC

1 about it and as a result of that, I think he wants a new  
2 attorney because he doesn't trust me and he is facing an  
3 inordinate amount of time if he is convicted here, Judge. On I  
4 think Count Two, the gun count, he is looking at 25 years. He  
5 has a prior 924(c) conviction on Count One, I think it is a  
6 10-year minimum, so we are talking about the rest of his life  
7 in jail, if he is convicted.

8 So, the stakes are very high here and I believe that  
9 he should have not necessarily counsel of his choice because  
10 this is a CJA matter, but someone in whom he has more -- a  
11 better rapport and more confidence.

12 THE COURT: Well, my position is this. Unless the  
13 government has a different position or agrees with your  
14 position, we have a trial scheduled and a long-standing trial  
15 that's been scheduled for September, scheduled for trial  
16 September 10. I do not intend to change that trial date. I do  
17 not intend to relieve you if this case is going to trial.  
18 Either you will try the case or if he wants another lawyer to  
19 try the case, then he can hire another lawyer if he can afford  
20 to hire another lawyer. It is too late at this point,  
21 particularly based on what you said. I don't have to say you  
22 have no control over what the other defendants are offered by  
23 the government and you have no control over what they decide to  
24 do with their case. Everybody makes their own decision about  
25 their cases depending on their circumstance.

I895polC

1           There is no reason for me to believe that you have not  
2 fully, adequately represented Mr. Polk. Mr. Polk is scheduled  
3 for trial. Trying to assign him a new lawyer at this point  
4 would only delay that trial and I don't intend to delay that  
5 trial. What I am willing to do, the only thing that I am  
6 willing to do at this point, is if Mr. Polk would like to  
7 consult with another attorney, either with you or without you,  
8 about his circumstance, I am perfectly willing to assign a  
9 lawyer for that limited purpose. I believe Mr. Montgomery is  
10 on duty.

11           MR. MONTGOMERY: Yes. Good morning, your Honor.

12           THE COURT: Good morning. He is on duty today.

13           I am willing to do this: Give Mr. Polk an opportunity  
14 to sit down with Mr. Montgomery, with you and/or without you,  
15 to discuss his circumstances and the choices that he has so he  
16 can make an informed judgment about what he wants to do with  
17 this case, and in fact I am willing to give him a week to  
18 decide, to consult, and then my intention would be, still is, I  
19 cleared the calendar, I have a jury panel ready, that we are  
20 going to trial on September 10 if this case is going to trial.  
21 If it is not going to trial, if there is a disposition, we will  
22 do that in a week. If there is no disposition then we are  
23 going to stick with the firm trial date of September 10th.

24           I'm not going to relieve you, I think it is a unfair  
25 to have some other lawyer come in here and unfair to try to

I895polC

1 tell Mr. Polk to have a lawyer walk in here weeks before the  
2 trial and try to get prepared to try this case. You have been  
3 fully working with him all of this time and we have been all  
4 preparing for trial.

5 So, as I say, I will give him an opportunity to speak  
6 with you and Mr. Montgomery, I am willing to adjourn the case  
7 for a week to decide whether or not he wants to go to trial on  
8 the 10th or he wants to do a disposition like the others next  
9 week, and if we are going to trial then we are going to plan it  
10 the way we already planned it, trial on September 10th, and  
11 whatever happens with the trial is what happens with the trial.

12 MR. LIND: Judge, I am not disagreeing with you.  
13 Obviously, if I did disagree with you, it wouldn't make any  
14 difference. I am just -- I wanted to alert the Court to this  
15 issue which I did, and I appreciate your Honor having picked up  
16 on it right away and I believe that I have vigorously advocated  
17 and I think your Honor could tell that from even the  
18 suppression hearing that we had and that's the way I intend to  
19 be in court but he is a client, he has certain rights.

20 THE COURT: Sure.

21 MR. LIND: And I understand your Honor is protecting  
22 them.

23 THE COURT: As I said, I am willing to let him consult  
24 with Mr. Montgomery. If Mr. Montgomery has a different view of  
25 the case and he thinks he wants to tell him that he has a

I895polC

1 different view and that something else can happen other than  
2 what we are doing, then he can consult with him and make an  
3 informed judgment by consulting with you and him and deciding  
4 what he wants to do. But, this is his case, it is not your  
5 case. Whatever the consequences are of a plea or guilty  
6 verdict after trial or even a not guilty verdict after a trial,  
7 those are consequences to him, not the lawyers. The lawyers  
8 move on to the next case and this his life, he has to make a  
9 decision what he wants to do. But I am not going to, after  
10 having prepared for trial and having all the parties be ready  
11 for trial at this point in time, I am not going to delay this  
12 at this point like trying to ask a new lawyer to come in and  
13 try to get up to speed unless there is some lawyer that  
14 Mr. Polk knows that he wants to hire who says he is willing to  
15 come in here and try this case on September 10th instead of  
16 you.

17 MR. LIND: Judge, just one matter. I have another  
18 hearing, bail hearing in front of Judge Gardephe and I have to  
19 leave right now.

20 THE COURT: Sure.

21 MR. LIND: Could Mr. Montgomery -- I don't know if  
22 Mr. Polk wants to talk to Mr. Montgomery outside my presence  
23 but I am going to be there until about, I would say about at  
24 least 12, 12:15. Could he not be brought back to the MCC?

25 THE COURT: We can put him on the afternoon bus. I

I895polC

1 will ask the marshals to hold him until the afternoon bus so he  
2 can consult with Mr. Montgomery and still have an opportunity  
3 to consult with you when you have the time to do that, but I'm  
4 going to give him a whole week to do this. So, I am going to  
5 adjourn to next week at 10:00, so to the extent that the  
6 conversations continue beyond a day, he has a full opportunity  
7 to consider his options and what he thinks is in his best  
8 interest and we will reconvene at 10:00 on August 16th.

9 Mr. Folly, did you want to be heard on this issue?

10 MR. FOLLY: Your Honor, the government's view is that  
11 we agree with your Honor's decision. We think this is fully  
12 within your discretion and the issue that appears to be driving  
13 Mr. Polk's dispute with his lawyer at the moment is that he  
14 hasn't been made a plea offer. As your Honor said on the  
15 record, that's not within Mr. Lind's control, that's within the  
16 government's control.

17 This trial date has been set for quite some time.  
18 This case has been pending for nearly a year. The government  
19 is not presently intending to make a plea offer to Mr. Polk.  
20 We are fully intent on proceeding trial on September 10th.

21 THE COURT: All right. So, we will adjourn for a  
22 week. I will let Mr. Polk consult further with Mr. Lind and  
23 Mr. Montgomery and I will see all the parties at 10:00 and we  
24 will see whether or not what Mr. Polk's decision is.

25 MR. MONTGOMERY: Your Honor, I fully intend to speak

I895polC

1 to Mr. Polk while he is in the building today and, if  
2 necessary, Friday and Saturday. The only issue is I'm going to  
3 be gone next week. My wife forces me to go away with her and  
4 spend some time.

5 THE COURT: You have to report to a higher authority.  
6 I understand that.

7 MR. MONTGOMERY: Yes.

8 THE COURT: That's fine. I think as long as you have  
9 a full conversation with Mr. Polk, if there is something,  
10 Mr. Lind is still going to be Mr. Polk's lawyer for the trial  
11 so if there is something else that we need you for then we can  
12 contact you between now and the trial date.

13 MR. MONTGOMERY: Thank you, your Honor.

14 THE COURT: Otherwise, Mr. Lind will be here with his  
15 client.

16 MR. LIND: One matter that Mr. Polk brought up to me  
17 Judge, very quickly?

18 THE COURT: Yes.

19 MR. LIND: Mr. Polk has an afternoon visit, is that  
20 correct, at the MCC, so he does not want to be on the afternoon  
21 bus.

22 MR. MONTGOMERY: I will go over, your Honor, if that's  
23 the point.

24 THE COURT: So, don't hold him. Like I say, you have  
25 a week.

I895polC

1 MR. LIND: I am just advising, your Honor.

2 THE COURT: I will give him the full opportunity. So,  
3 take this full week to have a full, complete discussion about  
4 this so Mr. Polk can make an informed judgment about his  
5 circumstance.

6 MR. LIND: One last matter, Judge. We do have a  
7 conference scheduled for a week from today at 10:00 a.m. so I  
8 assume that conference is still on?

9 THE COURT: That's when we are going to meet a week  
10 from today, 10:00 a.m.

11 MR. LIND: Thank you, Judge.

12 MR. MONTGOMERY: Thank you, your Honor.

13 MR. FOLLY: Thank you, your Honor.

14 oOo